

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

EAST TEXAS BAPTIST UNIVERSITY,

and

HOUSTON BAPTIST UNIVERSITY,

Plaintiffs,

v.

KATHLEEN SEBELIUS, *et al.*

Defendants.

Civil No. 12-3009

Plaintiffs' Status Report

Pursuant to this Court's order, Plaintiffs hereby report:

Plaintiffs' situation has not changed since the last status report. Dkt. 31. ETBU and HBU continue to wait for the Defendants to propose a final rule. None of the changes proposed by the government thus far in the Notice of Proposed Rule-Making ("NPRM") or elsewhere will satisfy Plaintiffs' consciences. So, as discussed at the April 1 status conference, Plaintiffs expect that this litigation will continue after the final rule is issued (expected at the end of July) and the stay is lifted.

Related litigation involving closely held corporations challenging the Mandate is ongoing in the federal courts of appeals. The Tenth Circuit agreed to hear *Hobby Lobby v. Sebelius* as an initial *en banc*, expedited appeal. Oral argument for that case is set for May 23, 2013. No. 12-6294 (10th Cir., injunction pending appeal denied Dec. 20, 2012). Oral arguments are also set for merits challenges to the

Mandate in the 3rd, 6th, and 7th Circuits.¹ In another for-profit appeal, a three-judge panel of the D.C. Circuit reconsidered its denial of an emergency injunction pending appeal and granted the injunction. *Gilardi v. Sebelius*, No. 13-5069, Dkt. 1428120 (D.C. Cir. Mar. 29, 2013). Of the cases involving for-profit corporate plaintiffs, 17 courts have issued injunctive relief favoring plaintiffs, and six courts have denied injunctive relief.²

At the April 1 status conference, the Court ordered Westminster and the parties to submit supplemental facts regarding the differences between Westminster and Plaintiffs to assist the Court in deciding the motion to intervene. Dkt. 40. In this status report, ETBU and HBU do not address the Government's arguments that this Court does not have jurisdiction over Plaintiffs' case, as they will require full briefing when properly before the Court. Aside from the question of whether Westminster is protected under the safe harbor, which Plaintiffs do not have sufficient knowledge to address, Plaintiffs believe that the main differences between Plaintiffs and Westminster apparent from the pleadings are different theological approaches to the questions raised by this litigation, different structures and purposes, and different insurance histories.

¹ *Conestoga Wood Specialties Corp. v. Sebelius*, No. 13-1144 (3d Cir., injunction pending appeal denied Feb. 7, 2013; oral argument tentatively scheduled for May 30, 2013); *Autocam Corp. v. Sebelius*, No. 12-2673 (6th Cir., injunction pending appeal denied Dec. 28, 2012; oral argument set for June 11, 2013); *Grote v. Sebelius*, No. 13-1077 (7th Cir., injunction pending appeal granted Jan. 30, 2013; oral argument scheduled for May 22, 2013).

² A comprehensive list of Mandate-related litigation is available at <http://www.becketfund.org/hhsinformationcentral/>. Counsel for Plaintiffs attempt to keep the information there reasonably current.

Once the final rule is issued, Plaintiffs will be required to assess the effect of any “accommodation” on their conscience through the lens of their Baptist theological tradition. Westminster will be required to do the same, only through the lens of its particular Reformed and Presbyterian tradition. Even if the conclusions are the same, Plaintiffs consider Westminster to offer a different theological perspective and differing interest in the litigation.

Similarly, Westminster’s structure and purpose as a seminary for training clergy provides a different perspective and will result in different consequences for Westminster than Plaintiffs.

Finally, based on the pleadings Plaintiffs believe Westminster has a different insurance history than Plaintiffs do.

Respectfully submitted,

/s/ Eric C. Rassbach

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2013, the foregoing was served on all counsel of record via the Court's electronic case filing (ECF) system.

/s/ Eric C. Rassbach
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